MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

UDL3622 – LAND LAW II

(All Sections / Groups)

18 APRIL 2022
Reading Time : 9:00 a.m. – 9:15 a.m.
(15 Minutes)
Answering Time: 9:15 a.m. – 12:15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. This Question paper consists of 2 sections. Attempt ONE question only in **Section A** and all THREE questions in **Section B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall CLEAN and ORIGINAL copy of **National Land Code (Revised -2020) (Act 828)**.

   "Clean" is defined to include no tagging, no annotation either by publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A (Answer ONE Question only)

QUESTION 1

(a) Based on the relevant cases, show the application of equitable principle in lease transactions in Peninsular Malaysia.

(8 marks)

(b) Tenancy is one type of dealing that does not require registration. It is also known as 'Tenancy Exempted from Registration' in the National Land Code (Revised 2020). Illustrate how a tenant protect his interests in the land against future owner.

(8 marks)

(c) The phrase "for a loan" under sections 281(1) and 330(1) of the National Land Code (Revised 2020) was deleted via the National Land Code (Amendment) Act 2016 (Act A1516). Present the implication of the deletion on the purpose(s) of the creation of a lien.

(9 marks)

(Total: 25 marks)

OR

QUESTION 2

(a) "The title of the transferor shall pass to and vest in the transferee upon the registration of any such transfer, together also with the benefit of any registered interest then enjoyed with the land": section 215(2) of the National Land Code (Revised – 2020).

Based on relevant case law, critically analyse the applicability of the concept of "bare trust" in the context of the parties under a contract of sale of land pending registration.

(15 marks)

(b) "A Registrar's caveat provides a much better protection than a private caveat." Show to what extent you agree with the above statement with reference to supporting statutory provisions and cases.

(10 marks)

(Total: 25 marks)

Continued...

SECTION B (Answer all THREE questions)

QUESTION 3

Nobita is running an event planning and management business in town. His business was badly hit by the recent coronavirus pandemic. To rescue his business, Nobita has gambled his luck at an underground casino operated by Gian. Unfortunately, he owed a huge gambling debt to Gian now.

Gian allowed Nobita to settle the gambling debt within three months from 11 November 2021 but on the condition that Nobita has to deposit with Gian the original issue document of title ('IDT') to his house as the security. If Nobita failed to settle within three months from 11 November 2021, Nobita would lose the house ownership. The prevailing market value of the house was RM400,000.00 only. Unknown to Nobita, after obtaining the original IDT, Gian has instructed Suneo to forge Nobita's signature and transferred the house to Gian-Suneo Sdn. Bhd., a company owned by both of them.

Gian-Suneo Sdn. Bhd. then transferred the house to Shizuka for a purchase price of RM300,000.00 only. Shizuka obtained a housing loan from Bank Doraemon to finance the purchase of the house. Shizuka was aware of Nobita's presence in the house but Gian has represented to Shizuka that Nobita is his relative and assured Shizuka that Nobita would vacate the house upon the payment of the balance purchase price. The transfer in favour of Shizuka and charge in favour of Bank Doraemon had been duly presented for registration at the relevant land office/registry.

When Shizuka has paid the full purchase price to Gian, she demanded vacant possession of the house from Nobita who refused to do so. The whole truth was revealed, but Gian and Suneo have then disappeared from the town.

Assess the rights of Nobita, Shizuka and Bank Doraemon over the house.

Would the position be different for Nobita if Bank Doraemon has sold the house to a successful bidder in a public auction after Shizuka has defaulted in the loan instalments?

(Total: 25 marks)

Continued...

QUESTION 4

Rondo owns an apartment in Bukit Damansara, Daerah Petaling, Negeri Selangor measuring total in area approximately 350 square meters ('the first property'). The strata title has not been issued by the developer. Rondo entered into a loan agreement with Bank Mee by which he borrowed RM500,000.00 only to finance the purchase of the first property. In consideration thereof, Rondo assigned to Bank Mee all his rights, title and interests in the first property as security for the loan. Subsequently, Rondo defaulted in his repayment instalments and interest. Bank Mee planned to auction the first property.

On the other hand, Rondo had entered into another housing loan for a sum of RM700,000.00 only from Bank Qu where he charged his single-storey terrace house in Solaris Heights held under HS (D) 445, PT No. 7765 in Mont Kiara ('the second property') as security to this loan. Upon presentation of the charge document, the bank solicitors have advised Bank Qu to release the loan to Rondo. Unfortunately, the Registry has rejected the registration on the ground that the written consent from the state authority has not been enclosed in the presentation. All the instruments, title and other supporting documents were returned to the bank solicitors. In fact, it was the carelessness of the solicitor in charge, Ayo Alamak, of the solicitors' firm acting for Bank Qu, who overlooked the application for consent from the state authority. In order to hide his mistake, Ayo Alamak has kept all the documents inside the drawer. The solicitors' firm and Bank Qu only discovered this few months later after Ayo Alamak has resigned. The solicitors' firm assured Bank Qu that the bank's interests can be protected by lodging a lien-holder's caveat since the original issue document of title to the second property was in their custody.

The recent coronavirus outbreak has affected Rondo's business badly. Rondo requested an overdraft facility from Bank Pee for the sum of RM500,000.00 only for his company, Rondo Sdn. Bhd. A third-party charge was created over his shoplot Unit in Berjaya Times Square, held under Geran HBM 543/M1/05-84, Lot No. 6666, Bandar Kuala Lumpur ('the third property'). The said charge was duly registered on 8 July, 2021. It was stated in the loan agreement in respect of the overdraft facility that the loan was payable on demand.

Eventually, Rondo defaulted in repayment of the loan with Bank Pee for two consecutive months in November and December 2021. Bank Pee instructed their solicitors to issue and serve Form 16D dated 14 January 2022 on Rondo Sdn. Bhd. to warn the company to remedy the breach within seven days, failing which the overdraft facility will be terminated. Bank Pee's solicitors accumulated the outstanding amount together with the interests. Bank Pee then filed an application for an order for sale at the Kuala Lumpur High Court on 1 April 2022.

Continued...

Prepare an advice to Bank Mee, Bank Qu and Bank Pee separately on their respective rights.

(Total: 25 marks)

QUESTION 5

(a) Lily entered into a Sale and Purchase Agreement ("the agreement") to purchase a piece of land located in Ayer Keroh ("the land") from her friend, Gigi at an agreed price of RM300,000.00 only. Based on the agreement dated 1 February 2021, Lily is to pay the deposit of RM30,000.00 only being 10 percent of the purchase price to Gigi upon execution of the agreement. The parties have agreed to appoint M/s. Bawang & Partners ("the solicitors") as the solicitors in charge cum stakeholder of the transaction.

Lily who wishes to build a mansion on the land wants to take the possession of the land as soon as possible so that the building of the house could commence after taking possession of the land. Considering Lily's preference, the solicitor had advised her to pay the remaining sum of RM270,000.00 only to enable Lily to take possession and get the construction work started. Following the advice, Lily immediately deposited the remaining sum of RM270,000.00 only into M/s. Bawang & Partners' office account with the understanding that the solicitor will hold the money as stakeholder pending completion of the registration of the transfer in favour of Lily. The instrument was presented for registration accordingly on 3 May 2021.

Gigi urged for the money to be surrendered to her. Nevertheless, she was told by the solicitors that the money shall be held by the stakeholder until the transfer in favour of Lily is duly registered. After a long wait until July 2021, Gigi found out that the solicitor in charge had absconded with the money and could not be located. On the other hand, Lily discovered that the transfer in her favour could not be registered due to the reason that written consent from the State Authority had not been obtained.

Present an advice to all the parties above on their courses of action.

(15 marks)

Continued...

(b) Diana rented an apartment from Charles in May 2016. Diana has entered into a tenancy agreement with Charles upon, *inter alia*, the following terms:

Clause 5: the duration of tenancy is three (3) years with an option to renew for four (4) consecutive period of three (3) years each at an increase rate of ten percent (10%) in each renewal;

Clause 6: In the event Charles desires to sell the said apartment during the tenancy period, Charles shall grant to Diana the right of first refusal to purchase the said apartment; and

Clause 7: In the event Diana exercises the option to purchase, the purchase price shall be determined at the market value of the said apartment at the time of sale minus the total accumulated rentals paid by Diana.

The strata title to the said apartment has not been issued by the relevant authorities. Diana has entered a private caveat ('first caveat') on the master title immediately after executing the tenancy agreement to protect her interest. The agreement has been renewed once in 2019.

Recently, Charles has indicated his intention to sell the said apartment and Diana is interested to purchase. However, due to the disagreement on the purchase price between them, Charles has decided to sell the said apartment to a third party.

Diana intends to enter a private caveat ('second caveat') on the strata title to the said apartment recently issued by the relevant authorities to protect her interest since the first caveat is about to lapse.

Prepare an advice to Diana on the validity of the first caveat and intended second caveat.

(10 marks)

(Total: 25 marks)

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